



Federal Procurement Guidelines for FEMA Grants

Presented to:
Parish Grant Managers
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Purpose

To review the requirements of law, regulation and policy which apply to the administration of grants under the FEMA Public Assistance (PA) and Hazard Mitigation Grant Program (HMGP)



PA and HMGP Programs

- The three FEMA programs delivered to states following a presidential declaration are PA, IA and HMGP
- Louisiana is an Option 1 state: FEMA administers the IA program
- HMGP funding is automatic – additional percentage of all PA and IA funding



Procurement Compliance

Compliance is necessary in order to

- Obtain all of the funding in which you are entitled
- KEEP all of the funding



Law, Regulation and Policy

Federal

- Robert T. Stafford Disaster Relief and Emergency Assistance Act, USC 5121 et seq
- 44 CFR Parts 13.36, 13.37 and 13.40
- FEMA Disaster Assistance Guidance 9500 Series
- State/Local laws, ordinances and procedures
 - LRS Title 39
 - LRS Title 38
 - Other



De-obligation

De-obligation: The never ending struggle

- Who
 - FEMA
 - Department of Homeland Security-Office of Inspector General
- Biggest Reasons
 - Procurement
 - Reasonable Cost
 - Record Keeping

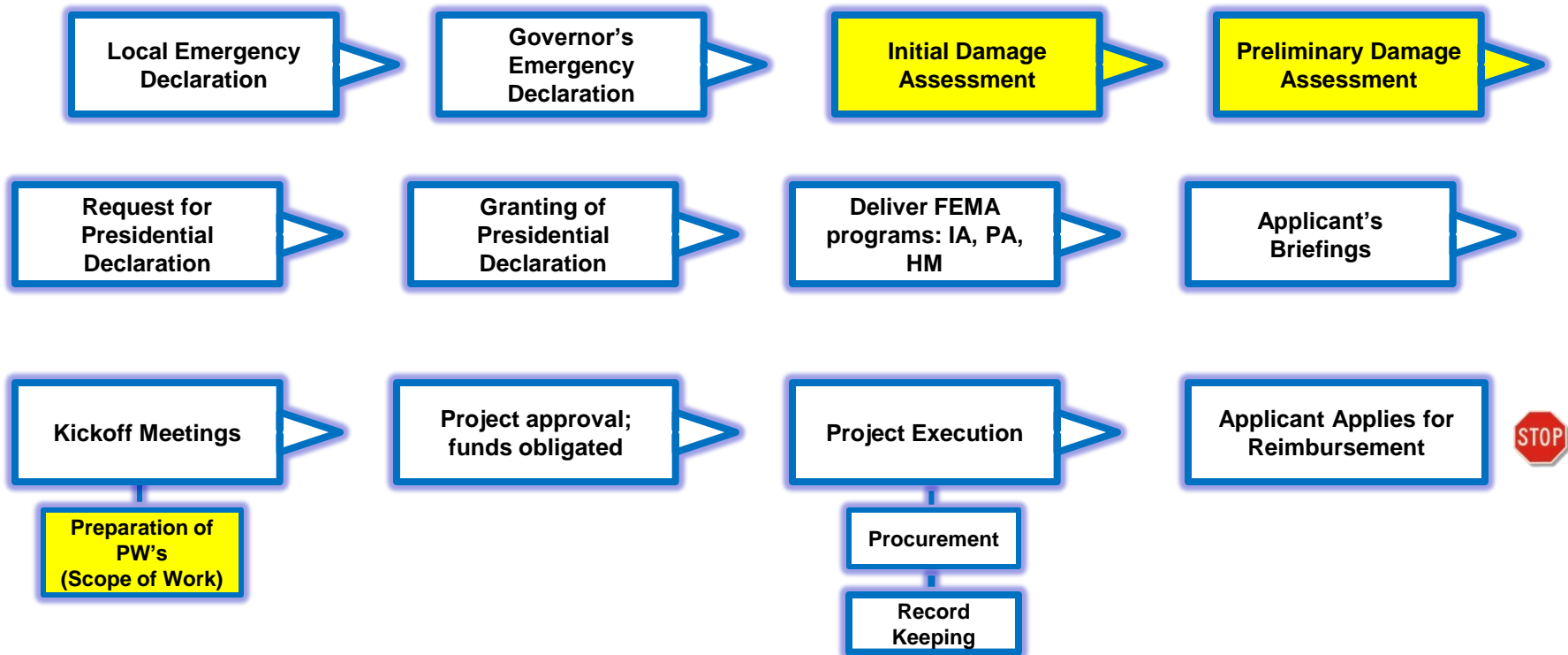


Preparation

- Key to avoiding problems
 - 5 Ps
 - Preparation, preparation, preparation
- How do we prepare
 - Gap analysis
 - Pre-qualified contractors
 - Pre-event contracts
 - Executive orders issued after emergency declaration



Lifecycle of an emergency/disaster





Scope alignment

- Damage assessment
- PW scope of work*
- RFP scope of work*
- Contract scope of work*

*Should all mirror one another



Basic contract components

- Cost
 - Lump sum
 - Unit price
 - Shall not exceed clause
- Term
- Scope



Types of Contracts

- Acceptable
 - Lump sum
 - Unit price
 - Cost plus fixed fee
 - Time and materials*
- Unacceptable
 - Cost plus a percentage of cost
 - Piggybacking

*Under very limited circumstances



44 CFR 13.36 Procurement

- (a) States
- (b) Procurement standards
- (c) Competition
- (d) Methods of procurement to be followed
- (e) Contracting with small and minority firms....
- (f) Contract cost and price
- (g) Awarding agency review
- (h) Bonding requirements
- (i) Contract provisions



44 CFR 13.36 (a) States

- States, as defined by 44 CFR 3 will follow their same policies and procedures for procurement
- Requires necessary clauses
- Otherwise, not required to comply with 44 CFR 13.36 (b) thru (i)



44 CFR 13.36 (b) Procurement Standards

- All other Grantees and sub-grantees that are not “states will use their own procurement procedures but they must conform to paragraphs (b) thru (i) of this regulation
- Maintain contract administration system
- Written codes of standards
- Protest procedures
- **GRANTEES AND SUBGRANTEES ALONE ARE RESPONSIBLE FOR ADMINISTRATIVE PRACTICES AND BUSINESS JUDGMENTS**

This section has 12 paragraphs and sub-paragraphs



44 CFR 13.36 (c) Competition

- Full and open competition
- Avoid restrictions
- Written selection procedures
- Can use updated prequalified contractors but cannot preclude potential bidders



44 CFR 13.36 (d) Methods of Procurement

- Small purchase procedures (< \$100,000)
 - Can obtain quotes from adequate number of qualified sources
 - Modify your procurement process to meet this requirement
 - Does your procedure allow this?
- Sealed bids
 - Shall be publicly advertised
 - Preferred for construction
 - Firm fixed price contract
 - Awarded to responsible lowest bidder



44 CFR 13.36 (d) Methods of Procurement (con't)

- Competitive proposals
 - Can be publicized verses advertised
 - Solicited from an adequate number of qualified sources
 - Price but one factor to consider
 - Used for qualification based procurement for A/E services
- Non-competitive proposal
 - Also known as sole source contracts
 - Accepted on a very limited basis



44 CFR 13.36 (e) Contracting with small and minority firms...

Take all necessary affirmative steps to assure that minority firms, women's business enterprises and labor surplus area firms are used when possible.



44 CFR 13.36 (f) Contract cost and price

- Cost analysis must be performed on every procurement action
 - A properly procured contract with two or more bids acts as the cost analysis to determine reasonable cost
 - Improperly procured contracts, lack of competition, modifications and change orders require a cost analysis to determine reasonable cost
 - Under request for qualifications, a cost analysis shall be done prior to negotiations for cost
 - Cost plus a percentage of cost and percentage of construction cost methods SHALL NOT be used
 - Cost is always subject to reasonableness (44 CFR 13.24)



44 CFR 13.36 (g) Awarding agency review

- Awarding agency (GOHSEP) entitled to review procurement process and documents



44 CFR 13.36 (h) Bonding requirements

- Applies only to construction or facilities improvement contracts exceeding \$100,000.
- Awarding agency may accept bonding policy of applicant
- If awarding agency does not accept bonding policy of applicant the following applies:
 - A bid guarantee from each bidder equivalent to five percent of the bid price
 - A performance bond for 100% of the contract price
 - A payment bond for 100% of the contract price



44 CFR 13.36 (i) Contract provisions

Provision	Application
(1) Administrative and legal remedies for violation or breach of contract	All
(2) Termination for cause and for convenience; also see 44 CFR 13.44 which addresses procedure for termination for convenience	All
(3) Compliance with EOs 11246 and 11375, Equal Employment Opportunity	Applies to all construction contracts >\$10,000 and to grantees and their contractors and to sub-grantees
(4) Compliance with the Copeland Anti-Kickback Act	applies to construction contracts >\$2,000 awarded by grantees and sub-grantees



44 CFR 13.36 (i) Contract provisions (con't)

Provision	Application
(5) Compliance with the Davis-Bacon Act	Does not apply to state or local contracts under the FEMA PA program
(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act	Applies to construction contracts awarded by grantees and sub-grantees in excess of \$2,000 and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers
(7) Awarding agency requirements for reporting	All
(8) Awarding agency requirements to patent rights and inventions	All or as needed (???)



44 CFR 13.36 (i) Contract provisions (con't)

Provision	Application
(9) Awarding agency requirements pertaining to copyrights and data	All or as needed (???)
(10) Access to the records of the contractor	All
(11) Retention of required records for three years	All
(12) Compliance with the Clean Air Act, Clean Water Act and EPA regulations	Contracts, subcontracts and subgrants of amounts >\$100,000
(13) Mandatory standards and policies relating to energy efficiency contained in state energy conservation plan	All



Parting Comments

- Obtain the services of an attorney, regulatory specialist
- Look for someone who also understands emergency management and disaster recovery
- Do not wait until the Wolf comes knocking at the door; you will be playing catch-up
- Modify your procurement process to match requirements of 44 CFR 13.36 when it makes it easier on you.
- Procurement assistance and the related issues that are eligible expenses reimbursed by FEMA – USE IT



Reference Materials

FEMA Publications and Independent Self Study

- *FEMA 321 Public Assistance Digest*
- *FEMA 322 Public Assistance Guide*
- *FEMA 323 Public Assistance Applicant's Handbook*
- *FEMA 325 Debris Management Guide*
- *IS 700 NIMS Introduction*
- *IS 800 National Response Framework Introduction*
- *IS 100, 200 Incident Command System*

Electives

- *IS 208 State Disaster Management*
- *IS 230 Principles of Emergency Management*
- *IS 235 Emergency Planning*
- *IS 630 Introduction to the PA Process*

www.fema.gov



Parting Comments

QUESTIONS ???

Ben Plaia

Legal Counsel for Disaster Recovery

225-242-6030 (O)

225-456-0374 (C)

ben.plaia@la.gov